

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION  
CANTON, OHIO**

<b>IN RE:</b>	)	<b>CASE NO. 05-69543</b>
	)	
<b>ELKINS, CLARENCE JR.</b>	)	<b>CHAPTER 7</b>
	)	
<b>DEBTOR</b>	)	<b>JUDGE RUSS KENDIG</b>
	)	
	)	<b><u>MOTION TO DISTRIBUTE</u></b>
	)	<b><u>FUNDS TO DEBTOR PRIOR</u></b>
	)	<b><u>TO APPROVAL OF FINAL</u></b>
	)	<b><u>REPORT</u></b>

Now comes the Chapter 7 Trustee, Anne Piero Silagy, and respectfully requests the Court to enter an Order authorizing her make a distribution to the Debtor prior to the approval of the final report in this case.

1. On October 16, 2005, Clarence Elkins Jr., filed a petition for relief under Chapter 7 of the United States Bankruptcy Code. Anne Piero Silagy was appointed as the Chapter 7 trustee.

2. Prior to the filing of the bankruptcy petition, the Debtor's father, Clarence Elkins Sr., was wrongfully incarcerated and was subsequently exonerated and released from prison. As a result, Clarence Elkins Sr., the Debtor, his mother and his brother filed a civil rights action against the City of Barberton and various defendants in the United States District Court for the Northern District of Ohio entitled Elkins v. Summit County of Ohio Prosecutor's Office, et. al. Case No. 5:06 CV 3004. Through mediation a proposed settlement of the entire case was reached for \$5,250,000.00 of which the sum of \$626,787.32 was allocated by agreement of the Plaintiffs to the estate's claims.

3. From the estate's share of the proceeds, and pursuant to Court order, \$216,906.65 was paid to special counsel for their fees and \$5,000.00 was paid to the Debtor in full and complete

resolution of any exemptions. The remaining sum of approximately \$404,000.00 is being held for further distribution in accordance with the United States Bankruptcy Code.

4. The settlement funds were received by the Chapter 7 trustee on January 26, 2011. On February 10, 2011 the trustee filed a 2011 tax return along with a 505b request for prompt determination of the estate's tax liability. It is the estate's and the Debtor's position that the funds are not taxable. According to the accountant, if such funds are taxable, the tax liability will be approximately \$208,000.00.

5. Unsecured claims filed to date in the case total approximately \$3,300.00. The trustee estimates that, even if there is tax liability, after payment to all creditors, there are funds in excess of all claims and projected expenses of at least \$120,000.00. Since the closing of the case will not be for at least 60 days, and may be delayed even further if the return is selected for audit or there is a tax dispute, the Debtor has requested and the trustee believes it appropriate to make a partial distribution to the Debtor of \$120,000.00. The trustee has budgeted some funds to challenge any IRS determination of tax liability, however, the Debtor understands that should any challenge of any IRS determination be required and exceed any reserve for any administrative expenses, the Debtor would be required to reimburse funds to the estate in order to continue any such challenge.

WHEREFORE, the Chapter 7 Trustee, Anne Piero Silagy, respectfully requests the Court to enter an Order authorizing her to distribute funds to the Debtor under the terms and conditions set forth above.

Respectfully submitted.

/s/Anne Piero Silagy  
Anne Piero Silagy (#0030444)  
220 Market Avenue South  
Suite 900  
Canton, Ohio 44702

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IN RE:	) CASE NO. 05-69543
	)
ELKINS, CLARENCE JR.	) CHAPTER 7
	)
DEBTOR	) JUDGE RUSS KENDIG

**CERTIFICATE OF SERVICE**

I, Anne Piero Silagy, hereby certify that the foregoing **Motion for Authority To Distribute Funds to Debtor Prior to Approval of the Final Report and Notice of Hearing** was sent by regular U.S. mail, postage prepaid, this 15th day of February 2011 to the following and to those listed on the attached service list:

Clarence Arnold Elkins, II  
7645 Willow St  
Louisville, OH 44641

Michele Berry  
114 E. 8<sup>th</sup> Street  
Cincinnati, OH 45202

Loevy & Loevy  
312 North May St.  
Ste. #100  
Chicago, IL 60607

Roetzel & Andress  
222 S Main St  
Akron, OH 44308

Internal Revenue Service  
Insolvency Group  
1240 East Ninth Street  
Room 457  
Cleveland, OH 44199

Internal Revenue Service  
PO Box 21126  
Philadelphia, PA 19114

United States Attorney's Office  
Carl B. Stokes United States Courthouse  
801 West Superior Ave. Suite 400  
Cleveland, OH 44113-1852

Attorney General of the United States  
US Department of Justice Tax Division  
Civil Trial Section Northern Division  
PO Box 55, Ben Franklin Station  
Washington, DC 20044

Attorney General Office  
Collection Enforcement Section  
Attn: Bankruptcy Staff  
150 E. Gay Street, 21<sup>st</sup> floor  
Columbus, Ohio 43215

Ohio Dept of Taxation  
Attn: Bankruptcy Division  
P.O. Box 530  
Columbus, Ohio 43216-0530

I, Anne Piero Silagy, hereby certify that the foregoing **Motion for Authority To Distribute Funds to Debtor Prior to Approval of the Final Report and Notice of Hearing** was electronically transmitted on or about **February 15, 2011** via the Court's CM/ECF system to the following who are listed on the Court's Electric Mail Notice List:

- Warner Mendenhall    warnermendenhall@hotmail.com, bcyecfnofity@rushpost.com
- Bruce R Schrader    bschrader@ralaw.com
- Anne Piero Silagy    asilagycourt@neo.rr.com, asilagy@ecf.epiqsystems.com
- United States Trustee    (Registered address)@usdoj.gov

/s/Anne Piero Silagy  
Anne Piero Silagy

Label Matrix for local noticing  
0647-6  
Case 05-69543-rk  
Northern District of Ohio  
Canton  
Tue Feb 15 09:49:26 EST 2011

Ralph Regula U.S. Courthouse  
401 McKinley Avenue SW  
Canton, OH 44702-1745

DEBT CREDIT SERVICES  
2493 Romig Road  
Akron OH 44320-4109

FIDELITY PROPERTIES INC  
220 E MAIN ST  
Alliance OH 44601-2423

OXFORD COLLECTION SERVIC  
135 Maxess Road Suite 2a  
Melville NY 11747-3801

ROSSMAN & CO  
3592 Corporate Drive Suite 10  
Columbus OH 43231-4578

Asset Acceptance  
PO Box 2036  
Warren MI 48090-2036

Aultman Hospital  
2600 6TH ST SW  
Canton OH 44710-1799

Capital One  
C/O Capital Management  
726 Exchange St, Ste 700  
Buffalo NY 14210-1494

Charter ONE Bank  
1215 Superior Av  
Cleveland OH 44114-3299

Diebold Employees Credit Union  
5995 Mayfair Rd.  
Canton OH 44720-1550

MRN  
801 South Waverly, Ste. 100  
Lansing MI 48917-4200

MRN  
801 South Waverly, Ste. 100  
Lansing MI 48917-4200

Mercy Medical  
1320 Mercy Dr.  
Canton OH 44708-2641

Movie Gallery  
102 West Main ST  
Dothan AL 36301

Radiology Svcs of Canton  
pob 20238  
Canton OH 44701-0238

Stark Co Emerg Phy  
PO Box 20670  
Canton OH 44701-0670

Stark Credit Bureau  
6973 PROMWAY AVE NW  
Canton OH 44720-7321

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Clarence Arnold Elkins II  
7645 Willow St  
Louisville, OH 44641-9046

Warner Mendenhall  
190 N Union St  
#201  
Akron, OH 44304-1362

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(d)Asset Acceptance LLC  
Po Box 2036  
Warren MI 48090-2036

End of Label Matrix  
Mailable recipients 20  
Bypassed recipients 1  
Total 21